

FILED BY CLERK

FEB -8 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0288-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JULIAN ADRIAN WYATT,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063253

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Julian Wyatt

Buckeye
In Propria Persona

H O W A R D, Chief Judge.

¶1 Julian Wyatt petitions this court for review of the trial court's denial of his petition for post-conviction relief, brought pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Wyatt was convicted after a jury trial of first-degree murder and was sentenced to life in prison without the possibility of release for twenty-five years. We affirmed his conviction and sentence on appeal. *State v. Wyatt*, No. 2 CA-CR 2008-0274, ¶ 11 (memorandum decision filed July 28, 2009). Wyatt then filed a notice of post-conviction relief, and appointed counsel filed a petition asserting the state had not proven jurisdiction and venue were proper in Pima County. She also alleged trial counsel had been ineffective in failing to move for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., and in failing to call certain defense witnesses that would have supported Wyatt’s third-party culpability defense. Wyatt, however, requested that counsel withdraw from the case and that the trial court instead consider his pro se petition for post-conviction relief, which included additional claims of ineffective assistance of counsel. In addition to the claims asserted by his Rule 32 counsel, Wyatt argued trial counsel had (1) inadequately prepared and investigated his case, specifically by failing to highlight certain evidence; (2) failed to obtain reports showing DNA¹ evidence collected was inconclusive; (3) did not further investigate unidentified latent palm prints from a bag containing shoes and clothing used during the crime; (4) failed to properly argue that an undisclosed witness should not be permitted to testify; (5) improperly argued a mere presence defense; and (6) improperly advised him of his right to testify. Wyatt also argued his appellate counsel had been ineffective in filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), instead of a “proper ‘opening brief.’”

¶3 The trial court granted Wyatt’s request to proceed pro se and conducted an evidentiary hearing, after which it denied relief. In regard to Wyatt’s claims of ineffective assistance of counsel, the court determined Wyatt had not demonstrated that

¹Deoxyribonucleic acid.

trial and appellate counsel's conduct had been deficient, noting that most of counsel's decisions were grounded in reasonable trial strategy and that, in any event, Wyatt had not demonstrated resulting prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (defendant must show counsel's conduct fell below prevailing professional norms and prejudiced defense); *State v. Gerlaugh*, 144 Ariz. 449, 455, 698 P.2d 694, 700 (1985) ("Disagreements in trial strategy will not support a claim of ineffective assistance so long as the challenged conduct has some reasoned basis."). As to Wyatt's claim based on jurisdiction and/or venue, the court determined it was undisputed the crime had occurred in Pima County and that jurisdiction and venue were proper. *See State v. Willoughby*, 181 Ariz. 530, 538-39, 892 P.2d 1319, 1327-28 (1995) (trial court may determine jurisdiction if "jurisdictional facts are undisputed"). Wyatt filed a motion for rehearing, which the court also denied.

¶4 On review, Wyatt reurges his claims that trial counsel had been ineffective in failing to call certain defense witnesses, in failing to adequately explain to him the defense theory and his right to testify, in not making certain arguments concerning the state's late disclosure of a witness, and in failing to adequately investigate DNA evidence. But Wyatt identifies no legal or factual error in the trial court's ruling, instead largely repeating his claims, sometimes providing additional facts not presented in his petition for post-conviction relief or at the evidentiary hearing. The court stated it was not considering any new information in denying Wyatt's motion for rehearing, and Wyatt does not argue the court erred in disregarding that evidence. Accordingly, to the extent Wyatt's arguments depend on that new information, we do not consider it. *See Ariz. R. Crim. P. 32.9(c)(1)(ii)* (petition for review must contain "issues . . . decided by the trial court"); *cf. State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980)

(appellate court does not consider issues in petition for review that “have obviously never been presented to the trial court for its consideration”).

¶5 And, based on our review of Wyatt’s arguments, the transcript of the evidentiary hearing, and the trial court’s ruling, we conclude the court correctly rejected his claims in a thorough and well-reasoned minute entry; we therefore adopt the court’s ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court rules correctly on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶6 For the reasons stated, although we grant review, we deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge